

LAWRENCE BREWSTER, Regional Solicitor
 DANIELLE L. JABERG, Counsel for ERISA
 MARY K. ALEJANDRO, Deputy Regional Solicitor
 California State Bar Number 243568
 Office of the Solicitor
 United States Department of Labor
 90 7th Street, Suite 3-700
 San Francisco, California 94103
 Telephone: (415) 625-7760
 Facsimile: (415) 625-7772
 Email: alejandro.mary@dol.gov

Attorneys for Plaintiff, Hilda L. Solis,
 Secretary of Labor, United States
 Department of Labor

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

HILDA L. SOLIS, Secretary of Labor,
 United States Department of Labor,

Plaintiff,

vs.

EMPIRE BUSINESS SYSTEMS, INC., dba
 Empiretek, a California corporation, and
 EMPIRE BUSINESS SYSTEMS, INC.,
 401(k) Plan, an employee benefit plan,

Defendants.

Case No. CV 10-2293 LHK

~~(Proposed)~~ ORDER OF ENTRY OF
 DEFAULT JUDGMENT AGAINST
 DEFENDANT EMPIRE BUSINESS
 SYSTEMS, INC.

Plaintiff, Hilda L. Solis, Secretary of Labor, United States Department of Labor,
 brought this action against Defendants Empire Business Systems, Inc. and Empire Business
 Systems, Inc., 401(k) Plan for violations of the Employee Retirement Income Security Act of
 1974 (“ERISA”), 29 U.S.C. §§ 1001-1191c.¹ Defendants Empire Business Systems, Inc.

¹ The Plan is named as a Defendant pursuant to Rule 19 of the Federal Rules of Civil Procedure solely to ensure that complete relief can be granted by the Court.

1 (“Defendant Empire Business Systems”) failed to timely answer the Complaint, and on August
2 12, 2010, the Clerk of this Court issued an Entry of Default in this matter. Having fully
3 considered the Secretary’s Motion for Default Judgment against Defendant Empire Business
4 Systems, Inc., and for good cause shown,

5 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that:

6 1. The Secretary’s Motion for Default Judgment against Defendant Empire Business
7 Systems, Inc. is hereby GRANTED in full and that judgment is entered in favor of the
8 Secretary against Defendant Empire Business Systems.

9 2. Defendant Empire Business Systems is hereby removed as a fiduciary to the Empire
10 Business Systems, Inc., 401(k) Plan (“Plan”).

11 3. Lefoldt & Co., P.A. of 690 Town Center Boulevard, P.O. Box 2848, Ridgeland,
12 Mississippi, 39158-2848 (Phone: (601) 956-2374) shall be, and hereby is, appointed as the
13 Independent Fiduciary of the Plan, and:

14 a. The Independent Fiduciary shall collect, marshal, pay out and administer all of the
15 Plan’s assets and take further action with respect to the Plan as appropriate, including
16 terminating the Plan when all of its assets have been distributed to all eligible participants and
17 beneficiaries;

18 b. The Independent Fiduciary shall, pursuant to the procedures outlined in the
19 Employee Benefits Security Administration’s Field Assistance Bulletin 2004-02, exercise
20 reasonable care and diligence to identify and locate each Plan participant and beneficiary who
21 is eligible to receive a distribution under the terms of the Plan;
22
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24
25

1 c. The Independent Fiduciary shall have all the rights, duties, discretion, and
2 responsibilities of a trustee, fiduciary, and Plan Administrator under ERISA and is ordered to
3 file a final Internal Revenue Service Form 5500 for the Plan;

4 d. The Independent Fiduciary is authorized to delegate or assign fiduciary duties as
5 appropriate and allowed under the law and may retain such assistance as it may require,
6 including attorneys, accountants, actuaries, and other service providers;

7 e. The Independent Fiduciary is authorized to receive \$1458.75 in reasonable fees and
8 expenses. The Secretary will pay the \$1458.75 fee out of the Employee Benefits Security
9 Administration's Abandoned Plan Fund, which was established to defray the expenses of the
10 administration and termination of low-asset abandoned plans;

11 f. The Independent Fiduciary shall have full access to all data, information, and
12 calculations in the Plan's possession and under its control, including information and records
13 maintained by the Plan's custodial trustee or service provider;

14 g. The Independent Fiduciary is authorized to give instructions respecting the
15 disposition of assets of the Plan; and
16

17 h. The Independent Fiduciary shall comply with all applicable rules and laws.

18 The Court, finding that there is no just reason to delay the entry of this Judgment,
19 expressly directs the entry thereof as a final order, pursuant to Fed. R. Civ. P. 54.
20

21 The Clerk shall close the file.

22
23 Date: January 21, 2011

By:


LUCY H. KOH
United States District Judge